29-10-12

ACC: Organisational Culture.

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Abstract

Since the ACC hit the headlines earlier this year, due largely to revelations about a major privacy breach, a number of key governance and management figures have departed the organisation, the Minister for ACC has made strong comments about the need for 'culture change' within the organisation, and formal inquiries have been undertaken by the Privacy Commission and the Office of the Auditor-General. These reports identified shortcomings in ACC's organisational practices and made many useful recommendations. My aim in this paper, however, is not to re-examine the findings of these investigations or to point the finger at anyone; but rather to reflect on the kind of 'culture' that the public deserve to see at ACC, and to ask what principles the organisation can apply in order to regain public confidence. The aim needs to be more than just getting ACC out of the headlines. Fortunately, we have in the Woodhouse Report and the Code of ACC Claimants' Rights a ready-made set of basic principles to get us started. Furthermore, there are simple principles of quality assurance that can help to ensure that service delivery reaches a high standard, while also managing the scheme within reasonable financial bounds and in compliance with the law. We should also ask, however, if there are provisions within the ACC Act itself that could be amended by Parliament to clarify issues that have become a source of public dissatisfaction with the scheme and its delivery. All of these goals are achievable, provided the political will is there to achieve them, the leadership at top governance and management levels sets the right example, and the systems are in place to guide performance.

I won't spend too much time today on the various complaints that have been heard about ACC's culture. But I do want to talk about how ACC could work more effectively to improve outcomes for injured New Zealanders through a commitment to providing excellent service, and thus restore the public's confidence.

I presume that most of us here today agree that the 24/7 no-fault model that underpins ACC is a good one, and that we just want it to succeed to the satisfaction of the public – bearing in mind that any of us could be a long-term claimant on ACC, if we are not already.

I am sometimes given the impression, though, that New Zealanders perceive the options to be either an ACC that is generous and caring, and that consequently allows people to languish, if not malinger, on compensation, and hence loses control of costs, or an ACC that is strict, uncaring, sometimes abusive of clients' dignity, and looking for every opportunity to avoid expenditure.

Surely there is a fiscally responsible and socially responsive middle way, and that's what I'm here to talk about.

And, before we get too excited, it's worth noting ACC's own reported client satisfaction surveys. According to the 2011 Annual Report, 'Telephone surveys are conducted to measure the satisfaction of clients who have used ACC's claims management services network within the previous three months' (p. 33). And 70 per cent of those surveyed responded as being 'satisfied' or 'very satisfied' when asked about the overall quality of service. We're free to doubt the validity of any such survey, but it seems only realistic to assume that most ACC clients are satisfied with the service, and that the genuine problems that we are dealing with relate to a relatively small number

of long-term or sensitive cases, who constitute a significant minority of ACC claimants, and each of which individually is important.

Now, it's easy to find some solid ground on which to base some thoughts about an improved 'culture' at ACC. We have the Woodhouse Report itself which, among other things, sought to eliminate all forms of litigation from the accident compensation system – not only the common-law negligence action. That is, Woodhouse knew very well that there is nothing to be gained from having injured persons expending their energy in battles with the compensation authority when they would be better off concentrating on their own rehabilitation.

Even if the claimant doesn't review and appeal decisions, the pathway to rehabilitation can be made a lot smoother if the right qualities of collaborative service relationship, minimizing conflicts and misunderstandings, are introduced from the moment that the injured person first contacts ACC right through to the termination of the claim.

But let me quote from a report into some of the less happy experiences of ACC.

> Not only was there a lack of empathy with the claimants, there were repeated complaints by claimants of a confrontational and adversarial attitude towards them; they felt that staff doubted everything they said. Claimants said that right from the commencement of their dealings with the Corporation officers seemed to openly and consistently doubt their integrity and their honesty. It was as if through each stage of their dealings with the Corporation the answer would be "no", unless they could establish good reasons why that denial should be reversed. One claimant said it was as if the staff were on some sort of bonus system. Another said that the overall impression he got was that the Corporation considered him to be a liar in every aspect of his life. Another woman said: "They forced me into an adversarial position; they didn't want to pay me so they went out of their way to prove that

> there was nothing wrong. Their actions and their disbelief cost me my health. My main problem was their confrontational attitude; the distrust and disbelief whilst I was trying to come to grips with chronic pain and disability." (Trapski, pp. 21-2).

That's an extract from Judge Peter Trapski's report into procedures at ACC written over 20 years ago, but it may sound to some of you as if it were written yesterday. So it's a pity that we are talking about similar problems again today.

Now, there will always be difficult and vexatious customers out there in the world, but there are things that any organization that deals with sensitive matters such as health-care and compensation can do to reduce the frequency and severity of such conflicts. Even as a university lecturer, there are times I have to say no, or that's not right, or I can't approve that, to students (who sometimes view themselves these days as paying customers), and yet there are ways of doing this that still maintain the trust and confidence of students. Providing good service can be coupled with sticking to core values, policies and regulations, while ensuring that clients have faith in the relationship, even if they aren't getting everything they may like to have.

If we are looking for some principles to apply to this question, a great place to start is in ACC's own Code of Claimants' Rights. This Code was issued under the 2001 Act by the then Minister for ACC, Ruth Dyson. The Code 'confers rights on claimants and imposes obligations on ACC in relation to how ACC should deal with claimants.' This Code is comprehensive and positive in its scope, and I won't try to summarise it right now, but let me just quote the clause that states the 'spirit' of the Code:

> This Code encourages positive relationships between ACC and claimants. For ACC to assist claimants, a partnership based on mutual trust, respect, understanding, and participation is critical. Claimants and ACC need to work together, especially in the rehabilitation process. This Code is about how ACC will work with claimants to make

> sure they receive the highest practicable standard of service and fairness.

That sounds like a good point of departure to me, and if ACC were to aspire at all times to abide by its own Code, then we may not be here today feeling the need to talk about their performance and their organizational culture.

So, how does a State monopoly organization that doesn't face the threat of customer exit lift its performance in the caring and respectful treatment of injured persons?

Making heads roll (regardless of its headline-grabbing expediency) won't be enough to get us there. We New Zealanders have become rather too trigger-happy these days when it comes to what we call euphemistically 'accountability', by which I suspect we too often really mean 'blame and punish an individual.' But punishment is not always the best preventive device, and it certainly is not in the spirit of the Woodhouse principles. Woodhouse was aware of the complex causes of risk and of the shared burden of responsibility for spreading risk and preventing accidents.

The accidental, but egregious, privacy breach that saw thousands of names sent to one long-term claimant of ACC was rightly placed in a wider organizational context by the report of the Privacy Commission into this incident. While it may be possible, and occasionally even necessary, to discipline an individual employee for such an accident, that alone does not help in preventing future such events. Management should always accept a wider responsibility, look for the basic causes of these events, and ask 'Were the right systems in place to prevent this from happening?' We should always look for a systemic solution if we are genuinely interested in prevention. That applies to injury prevention as much as it does to prevention of privacy breaches, the mitigation of client dissatisfaction, and to the management of risks in general.

It all starts with good leadership and governance from the top. ACC already has a clear set of values handed down to it from Woodhouse, from the law and from its own Code of Claimants' Rights. These values need to be translated into clear aims, and then the organization needs to assess risks that could prevent the achievement of its aims. The right policies and procedures that can guide (and not stifle) staff initiative need then to be put into place so that losses can be prevented, or managed when they do happen. Management need to maintain a firm oversight of the system itself and be seeking always to learn from errors and to improve. They should invite independent monitoring and oversight of their systems and their performance. Learning from errors requires a non-punitive atmosphere, so that staff can report near misses or minor incidents without fear of disciplinary actions. If people live in fear of punishment, management don't get the information that they need to manage risks proactively. If clients of ACC experience attitudes that they find negative or unconstructive from the front-line staff, it's reasonable to ask if this reflects the kind of internal culture that staff themselves are up against. It may also reflect insufficient investment in staff training and development.

I don't really know what goes on inside ACC, and so I hesitate to draw conclusions about its culture. All I am trying to do is point out how organizational culture can be improved and the risks of negative outcomes or relationship breakdowns mitigated.

Let me drill a little deeper though and look at the law itself, as I think that there are some ambiguities in the wording of the Act that could do with some clarification so that both ACC and its clients can have greater certainty. It's not within my brief, I believe, to state in detail how these provisions ought to be amended, as that needs to arise from a wider public deliberative process. So let me just outline some key concerns.

Section 26 of the Act defines personal injury. Physical injury or death caused by an accident is the most common cause of cover under the scheme, but the Act naturally needs to define some boundaries around what's meant by

'personal injury.' In defining certain exclusions, sub-section 4 states that 'personal injury' as covered by the Act does not include 'personal injury caused wholly or substantially by the ageing process.' Now, the phrase 'wholly or substantially' is poorly framed and, I suggest, is as flexible as a rubber hose. It can evidently be used to deny cover to the frail and elderly whose injuries could be attributed often to the effects of chronic degenerative conditions if not for which there would have been no or little injury at all, or recovery from injury would have been much more rapid.

Now the report on procedures at ACC carried out by Judge Peter Trapski back in the early 1990s has already covered this question, and I shall simply quote him:

> it had long been held in the High Court and in the Accident Compensation Appeal jurisdiction that the Corporation was bound to accept its claimants as it found them. A claimant who was particularly susceptible to injury because of an underlying disease, or a predisposition to injury, was entitled to compensation or cover for the actual injury he or she had sustained, even though a "normal" person might not have suffered such ill effects or ill effects to such an extent as the claimant. ...
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> This principle applied even if an underlying condition was merely activated or aggravated by the accident. It was not a question of determining whether the claimant's loss of earning capacity was due partly to the injury or accident and partly to an underlying disease or pre-disposition or condition. Provided that the loss of capacity was due in some extent to the injury or the accident, then the claimant was entitled to the full cover set out in the Act. Indeed, it was only if it could be shown that the damage was <u>exclusively</u> caused by disease, infection or the ageing process that cover could be denied (Trapski, pp. 47–48).

Perhaps ACC jurisprudence has moved on somewhat since those times, but I suggest that the principle that the ACC is bound to accept its claimants as it finds them is a sound one that could be codified in law.

This now brings me to the question of independent medical advice. The Act repeatedly refers to 'independent' medical and occupational advisers whose job is to report to ACC on capacity for work, as well as on matters that can affect cover itself, and a range of entitlements, particularly to elective surgery.

Questions have been raised recently in the House of Representatives about the apparent lack of independence of a handful of medical assessors.

Now, ACC's decision-making should not be captured by the claimant's personal physician, and so an independent medical opinion is often warranted. But, equally, we should not have a situation where certain physicians would be financially ruined tomorrow if ACC stopped sending them case files for assessment. Regardless of who pays the physician, medical ethics should always put the interests of the well-being of the patient – in this case claimant – first. And it is well known that it is not in the interests of the well-being of a claimant to rely on weekly compensation for longer than necessary; but rather, the re-establishment of life-goals and normal activities is in itself therapeutic. That was Woodhouse's very point too about rehabilitation and the avoidance of litigation. As I know from personal experience, as well as from reading scientific literature, maintaining activity as close to normal as possible is the best way to deal with back pain, for instance.

So, a truly independent medical opinion is surely one that considers the best interests of the client's well-being, and does so without fearing either the loss of that client as a paying patient, or the loss of lucrative business from the compensation slush-fund. Above all, a supposedly independent medical adviser is surely far too compromised if he or she comes to perceived as the Corporation's 'hit-man.'

Once again, I ask if the Act needs to be amended, in this case to clarify some standards of independence.

So, at last in 2012, the ACC boil got lanced. Then a few heads rolled and the Minister announced that she expected to see some 'culture change' at ACC. For some, that may be enough, but I would go further and suggest that the Minister and Parliament need to ask whether amendments to the Act could help to clarify matters for ACC and for claimants so that we don't slip back into these problems again. After all, 20 years ago, we were hearing of very similar problems in the Trapski Report, but this time it seems to be even worse.

I don't work in the Corporation, and I can't claim to know what it's like to work there. I speculate that they may need to do more in staff training on the Woodhouse principles, on the Accident Compensation Act, on the Code of Claimants' Rights, and on front-line employees' communication skills. It seems simple enough, for instance, to insist that no-one should write anything in an email or a file note that they would not want to see read out in Court, let alone on prime-time TV. Lessons in how to treat clients with care and respect could be in order too.

But that's mere speculation about matters internal to ACC to which I am not privy and over which I have no say. What I can see and discuss with you are some general principles of service-quality improvement and the wording of the legislation that ACC must abide by and execute. And so I'm putting the onus back onto our representatives in Parliament to give some thought to amendments to the Act.

I also argue that the National Party's 2011 election policy to bring in private-sector insurers to accident compensation is not a solution to the real problems that we are facing in this business – and that such a policy only risks making matters worse. Private-sector participation will not solve the compensation scheme's service-quality problems, because the private insurer's customer is the employer, and not the injured worker. It would be naïve to think that private insurers will be more responsive for injured New Zealanders.

In this particular line of business, the state monopoly model is administratively more efficient and is fully accountable to the government of the day and hence accountable to us, the public of New Zealand. We would be very foolish to give away this line of business, and the levies that fund it, to Australian insurance companies who would then frustrate us at every turn with talk of 'commercial sensitivity' if we were to attempt to hold them to account in future.

The fact that we are here today, able to debate on behalf of all New Zealanders the performance of this key institution of social protection is surely a very healthy sign of democratic participation and belonging. Let's not let go of that, and let's make sure that Parliament does not forget that we care enough to be keeping watch over what they do to our ACC.